

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF Case

HUGHES CONTRACTING INDUSTRIES, INC.,

Civil Action No. 08 CIV 10075 (LBS)

Plaintiff,

-against-

**DECLARATION OF
BRYAN KAPLAN
IN FURTHER SUPPORT OF
DEFENDANTS' MOTION
FOR DISMISSAL OF THE
COMPLAINT**

RELIANCE CONSTRUCTION OF CANADA
a/k/a Construction Reliance du Canada ltee;
RELIANCE CONSTRUCTION, LTD d/b/a
RCG GROUP, also known as RCG
CONSTRUCTION GROUP; and
STEVEN KAPLAN,

Defendants.

CANADA
Province of Quebec

I, BRYAN KAPLAN of the City of Montreal, in the Province of Quebec, do solemnly declare:

1. I am the Assistant Secretary of defendant Reliance Construction Ltd. d/b/a RCG Group (a Delaware corporation) and Vice President of defendant Reliance Construction of Canada a/k/a Construction Reliance du Canada ltee (a Canadian corporation), two of the defendants in the above-captioned action and I have personal knowledge of the facts contained in this declaration.

2. I submit this declaration in response to the affidavit of S. Mac Gutman, Esq. ("Gutman affidavit"), the attorney for plaintiff, submitted in opposition to the present motion, and in further support of defendants' motion, pursuant to Rule 12(h)(3) and Rule

56 of the Federal Rules of Civil Procedure, for summary judgment and an Order dismissing this action against defendants on the ground that the Court lacks subject matter jurisdiction over this case, i.e., complete diversity of citizenship between plaintiff and defendants does not exist.

3. Initially, it should be noted that as stated in defendants' Rule 7.1 Statement, previously filed with the Court, Tarbri Holdings Ltd. (a Canadian holding company) is the corporate parent of both defendant corporations.

4. Defendant Steven Kaplan is also an officer of both defendant Reliance Construction Ltd. d/b/a RCG Group and defendant Reliance Construction of Canada.

5. Reliance Construction of Canada is a Canadian corporation with offices located at 3285 J. B. Deschamps Lachine, Quebec, Canada H8T 3E4.

6. In the affidavit of S. Mac Gutman, Esq. ("Gutman affidavit"), submitted on behalf of plaintiff Hughes Contracting in opposition to the present motion, Mr. Gutman refers to and attaches a copy of a Certificate of Assumed Name, which I filed with the New York Department of State on January 27, 2009 (a copy of this document is annexed hereto as Exhibit H).

7. I filed the Certificate of Assumed Name after I learned that certain legal papers, which were served on "RCG Group" through the New York Secretary of State, were not reaching Reliance Construction Ltd.

8. I learned that some of these papers were in fact being served on "RCG Group LLC", a New York limited liability company, which was formed on or about June 16, 2008 (see Exhibit I, which is a printout from the New York Department of State website).

9. Reliance Construction Ltd. has no connection whatsoever to "RCG Group LLC".

10. The reason that the Certificate of Assumed Name uses the Canadian address as a mailing address for Reliance Construction Ltd. d/b/a RCG Group is because (a) Reliance Construction Ltd. ceased all business operations in December 2008 and has no place of business, (b) the Canadian address is the address where my business office is presently located (this address is also the address of defendant Reliance Construction of Canada of which I am also an officer) and (c) this address was the most convenient place to receive mail sent to Reliance Construction Ltd.

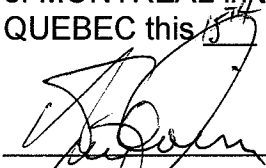
AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Signed: _____



Bryan Kaplan

DECLARED before me at the DISTRICT
of MONTREAL in the PROVINCE of
QUEBEC this 5th day of May, 2009.



a Commissioner for Oaths
in the Judicial District of Québec
HOWARD ZINGBOIM, number 57 160
My commission expires april 30th 2011

EXHIBIT H

CT-07

20090127003

Certificate of Assumed Name
Pursuant to General Business Law, §130

NY State Department of State
Division of Corporations, State Records and UCC
41 State Street, Albany, NY 12231-0001
www.dos.state.ny.us

1. NAME OF ENTITY

RELIANCE CONSTRUCTION LTD.

1a. FOREIGN ENTITIES ONLY. If applicable, the filer must name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

☒ Business Corporation Law☐ Limited Liability Company Law☐ Education Law☐ Not-for-Profit Corporation Law☐ Insurance Law☐ Revised Limited Partnership Act☐ Other (specify law):

3. ASSUMED NAME

RCG Group

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

3285 J.B. DESCHAMPS

Lachine, Quebec, Canada

H8T 3E4

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

☐ ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Genesee	Monroe	Orleans	Saratoga	Tompkins
Allegany	Columbia	Greene	Montgomery	Oswego	Schenectady	Ulster
Bronx	Cortland	Hamilton	Nassau	Otsego	Schoharie	Warren
Broome	Delaware	Herkimer	New York	Pulnam	Schuyler	Washington
Cattaraugus	Dutchess	Jefferson	Niagara	Queens	Seneca	Wayne
Cayuga	Erie	Kings	Oneida	Rensselaer	Steuben	<u>Westchester</u>
Chautauque	Essex	Lewis	Onondaga	Richmond	Suffolk	Wyoming
Chemung	Franklin	Livingston	Ontario	Rockland	Sullivan	Yates
Chenango	Fulton	Madison	Orange	St. Lawrence	Tioga	

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME.
Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 5 must be within the county(ies) listed in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

☒ No New York State Business Location

CT-07

20090127003

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an authorized person or attorney-in-fact for such corporation, limited partnership, or limited liability company. If the certificate is signed by an attorney-in-fact, include the name and title of the person for whom the attorney-in-fact is acting. (Example, John Smith, attorney-in-fact for Robert Johnson, president.)

BRYAN KAPLAN
Name of Signer

[Signature]
Signature

ASST. SECRETARY
Title of Signer

CERTIFICATE OF ASSUMED NAME
OF

Reliance Construction Ltd.

(Insert Entity Name)

Pursuant to §130, General Business Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 27 2009

TAXES 211312

BY: Koff

FILER'S NAME AND MAILING ADDRESS

RCG GROUP
3285 J.B. DESCHAMPS
LACHINE, QUEBEC, CANADA
H8T 3E4

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

(Cost Ref: 7468425 LT)

2009 JAN 23 PM 4:08

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2009 JAN 27 AM 8:08

FILED

070615000428

EXHIBIT I

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: RCG GROUP LLC

Selected Entity Status Information

Current Entity Name: RCG GROUP LLC

Initial DOS Filing Date: JUNE 16, 2008

County: NEW YORK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O LAWRENCE T. LOWEN
ONE EXECUTIVE DRIVE, STE 360
FORT LEE, NEW JERSEY, 07024

Registered Agent

NONE

This office does not require or maintain
information regarding the names and
addresses of members or managers of a
limited liability company.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 16, 2008	Actual	RCG GROUP LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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